

Application Serial No. 10/757,067
Reply to office action of 05/11/2007

PATENT
Docket: CU-3536

REMARKS/ARGUMENTS

Reconsideration is respectfully requested.

Claims 1-16 are pending before this amendment. By the present amendment, claims 1 and 10 are amended. No new matter has been added.

In the Office Action, claims 1-7 and 10-16 stand rejected under 35 U.S.C. §103(a) as allegedly being made obvious over Faust U.S. Pat. No. 4,822,597) in view of Sixsmith (U.S. Pat. No. 5,322,694). Also in the Office Action claims 8 and 9 stand rejected under 35 U.S.C. §103(a) as allegedly being made obvious over Faust, in view of Sixsmith and further in view of Mackles (U.S. Pat. No. 4,260,596).

For the reasons presented below, the Applicant respectfully traverses these obviousness rejections, and submits that the claims, as they now stand, are in allowable form.

The Examiner's attention is respectfully directed towards the following emphasized limitation of independent claim 1, as amended:

CLAIM 1

A soft, chewable anesthetic lozenge, comprising, by weight:
hydrogenated starch hydrolysate 10-60%;
hydrogenated mono- and di-saccharides 3-60%;
hydrogenated vegetable oil 1-20%;
gelatin 0.5-27%;
anesthetic 0.25-7.5%; and
water 1-25%.

The Examiner's attention is also respectfully directed towards the following emphasized limitation of independent claim 10, as amended:

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CLAIM 10

A method of treating mouth and throat pain comprising the step of:
administering to the mouth and throat a soft, chewable, non-sticky anesthetic
lozenge comprising, by weight:
hydrogenated starch hydrolysate 10 to 60%;
hydrogenated mono- and di-saccharides 3 to 60%;
hydrogenated vegetable oil 1 to 20%;
gelatin 0.5 to 27%;
anesthetic 0.25 to 7.5%; and
water 1 to 25%.

The Applicant respectfully submits that Faust, Sixsmith and Mackles do not disclose, teach or suggest the above-emphasized limitations of independent claim 1 and 10. More specifically, Faust, Sixsmith and Mackles do not disclose or suggest a soft, chewable anaesthetic lozenge comprising 1-20% by weight of hydrogenated vegetable oil.

In contrast to the presently claimed invention, Faust is used in the Office Action (pages 2 line 16 to page 3 line 6) to teach a chewing gum comprising an anesthetic, a sweetener such as hydrogenated starch hydrolysate or sucralose, and a flavoring agent. Sixsmith is used in the Office Action (page 3 lines 9-19) is used to teach a pharmaceutical lozenge containing gelatin treated with a polyhydric alcohol composition and silica. Mackles is used in the Office Action (page 3 lines 11-13) to teach a edible unit dosage form containing benzocaine, mannitol, sorbitol, sugars and PEG-75 along with excipients.

The Applicant respectfully can find nowhere within Faust, Sixsmith and Mackles, that disclose or suggests a soft, chewable anaesthetic lozenge containing 1-20% by weight of hydrogenated vegetable oil.

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As per MPEP 2143.03, a prima facie case of obviousness requires that the combined prior art references teach or suggest all of the claimed limitations. Since Faust, Sixsmith and Mackles, do not disclose or suggest a soft, chewable anaesthetic lozenge containing 1-20% by weight of hydrogenated vegetable oil, then Faust, Sixsmith and Mackles, in whole or in combination, cannot support an obviousness rejection to independent claims 1 and 10, as amended.

The Applicant therefore respectfully submits that independent claims 1 and 10, as amended, are in allowable form, and respectfully requests that the Examiner withdraw these obviousness rejections to independent claims 1 and 10.

Claims 2-9 and 11-16 ultimately depend from independent claims 1 and 10, and as such, incorporate by reference all the claim limitations contained therein, including the above emphasized limitations which have already been shown to be absent from Faust, Sixsmith and Mackles. Accordingly, claims 2-9 and 11-16 are also believed to be in allowable form as being dependent upon allowable base claims. The Examiner is therefore respectfully requested to withdraw these obviousness rejections of dependent claims 2-9 and 11-16.

For the reasons set forth above, the Applicant respectfully submits that claims 1-16, now pending in this application, are in condition for allowance over the cited references. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections and earnestly solicits an indication of allowable subject matter.

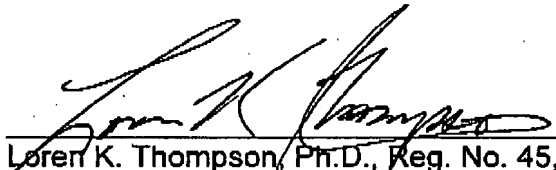
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This amendment is considered to be responsive to all points raised in the Office Action. Should the Examiner have any remaining questions or concerns, the Examiner is encouraged to contact the undersigned attorney by telephone to expeditiously resolve such concerns.

Respectfully submitted,

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